

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

VIRGIN VALLEY WATER DISTRICT,

Plaintiff,

vs.

VG PIPE LLC, *et al.*,

Defendants.

Case No. 2:09-cv-00309-LRH-PAL

ORDER

(Emg. Mot for Protective Ord - Dkt. #115)
(Emg. Mot for Protective Ord - Dkt. #116)

The court conducted a hearing on July 27, 2010 on Plaintiff's Emergency Motion for Protective Order to Limit Multiple "PMK" Depositions (Dkt. #115), and Defendants' Emergency Motion for Protective Order as to Discovery Related to Punitive Damages (Dkt. 116). Georlen Spangler and Matthew Forstadt appeared on behalf of the Plaintiff, and David Kahn and Trevor Hatfield appeared on behalf of the Defendants.

1. Plaintiff's Emergency Motion for Protective Order (Dkt. #115).

Plaintiff's Motion for Protective Order sought an order precluding the Defendants from proceeding with multiple Rule 30(b)(6) depositions scheduled for June 29, 2010. The Rule 30(b)(6) notice listed seventy topics or areas of testimony from one or more of Plaintiff's corporate designees. Plaintiff argues that the scheduled 30(b)(6) deposition was in violation of the court's limitation of twenty depositions per side. Additionally, Plaintiff argues the notice violates the provisions of Rule 30(a)(2) because Defendants have already taken a Rule 30(b)(6) deposition of Plaintiff's corporate designee, and did not seek leave of court to conduct an additional 30(b)(6) deposition.

Defendants oppose the motion contending Defendants were only attempting to obtain discovery necessitated by Plaintiff's recent damages claim which has substantially changed near the close of discovery. Defense counsel understood that Plaintiff was seeking approximately \$1,000,000 in

1 damages to repair the pipe involved in this litigation. However, when expert reports were served, the
2 damages increased to nearly \$8,000,000 “essentially overnight”. More significantly to defense counsel,
3 after Plaintiff disclosed its experts, counsel for Plaintiff served a Rule 26(a)(1) damages calculation
4 which estimated damages of nearly \$20,000,000, \$16,000,000 of which was based on a calculation of
5 prospective damages going forward fifty years. That calculation is based on the assumption that the
6 streets where damaged pipe will need to be repaired will need to be re-paved with asphalt a distance of
7 100 feet and the width of the roadway, or thirty-six feet. The opposition also identified some minor
8 issues that needed follow-up discovery as a result of the expert designations and information contained
9 in their reports.

10 Discovery closed July 8, 2010. After the motion was filed and before the hearing, counsel for
11 Defendants concluded a number of depositions, including the Plaintiff’s experts. The court inquired at
12 the hearing whether the additional discovery that had been completed rendered Defendants’ need for
13 testimony on the seventy topics moot. Counsel for Defendants stated that he had believed he had
14 received most of the information required, but identified by deposition notice topic number the areas in
15 which he still had questions. With respect to each subject matter area identified by Defendants’ counsel
16 during the hearing, Plaintiff’s counsel represented that Plaintiff had produced all documents and
17 testimony supporting its positions on liability and damages. Defendants’ counsel acknowledged that if
18 that representation was accurate, the motion was moot. The court advised counsel for Plaintiff that if
19 Plaintiff had not produced all responsive documents or supported its contentions in other discovery
20 responses, including deposition testimony, that Plaintiff would be precluded from relying upon it at trial
21 or motion practice. Additionally, Defendant may raise any issue concerning the foundation and/or
22 support for Plaintiff’s experts’ opinions at trial or in a motion in limine.

23 **2. Defendants’ Emergency Motion for Protective Order (Dkt. #116).**

24 The Defendants’ Emergency Motion for Protective Order seeks to preclude the Plaintiff from
25 obtaining discovery of Defendants’ financial information, which Plaintiff requested for the purpose of
26 establishing its punitive damages claim. Defendants argue that under Nevada law, a Plaintiff must
27 show the Defendant acted with oppression, fraud or malice to recover punitive damages, and that
28 Plaintiff has developed no evidence during discovery to support such a claim. Defendant intends to file

1 a Motion to Strike and/or for Summary Judgment challenging Plaintiff's punitive damages claim.
2 Therefore, the court should enter a protective order precluding the Plaintiff from discovery of the
3 Defendants' financial information at this time.

4 Plaintiff's opposition articulates its position that Defendants' manufacture and sale of pipe
5 which it knew or should have known was defective for its intended use makes them liable for punitive
6 damages. Plaintiff acknowledges that to be entitled to discovery on punitive damages, it must
7 demonstrate evidence Defendant engaged in conduct for which punitive damages are recoverable.
8 Plaintiff also acknowledges that the Nevada Supreme Court has held that, before discovery of financial
9 condition is discoverable on the issue of punitive damages, the Plaintiff must demonstrate some factual
10 basis for its punitive damage claim, but argues it has made a sufficient showing.

11 During the hearing, the court inquired whether counsel for Defendants had any objection to the
12 scope of Plaintiff's request for financial records. Counsel for Defendants indicated that he had
13 collected the financial statement that Plaintiff had requested, and that his only objection was to
14 producing the information before the court had decided whether Plaintiff could pursue its punitive
15 damages claim.

16 The court indicated that it was inclined to require the Defendants to collect the documents and
17 to produce them within fifteen days of decision of any dispositive motion addressing Plaintiff's punitive
18 damage claim if it survived. Plaintiff's counsel had no objection to this procedure.

19 Having reviewed and considered the matters,


20 **IT IS ORDERED:**

- 21 1. Plaintiff's Emergency Motion for Protective Order is **DENIED as moot**. However,
22 having assured the court and opposing counsel that Plaintiff has produced all responsive
23 documents and provided the Defendants with all testimony and evidence supporting
24 Plaintiff's liability and damages claims, Plaintiff will be precluded from relying upon or
25 adducing any evidence not produced during discovery.
- 26 2. Defendants' Emergency Motion for Protective order is **GRANTED**. Defendants shall
27 collect and maintain financial information responsive to Plaintiff's Request for

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1 Production of Defendants' financial information and serve them within fifteen days of
2 decision of dispositive motions if Plaintiff's punitive damage claim survives.

3 Dated this 28th day of July,
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6 Peggy A. Lech
7 United States Magistrate Judge
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